

Application No. 10/002,603
Reply to Office Action dated March 23, 2009

Amendments to the Drawings:

The attached sheet of drawings includes changes to Figure 12B. This sheet, which include Figs. 12A and 12B, replaces the original sheet including Figs. 12A and 12B.

Attachment: Replacement Sheet

REMARKS

Reconsideration of the instant application in view of the above amendments and the following remarks is respectfully requested. As of the mailing date of the Office Action dated March 23, 2009, claims 2, 11, 18-29, 31, 35 and 36 were pending and under examination. Claims 35 and 36 are withdrawn. By the present amendment, claims 2 and 31 are amended to more particularly point out and distinctly claim certain embodiments of the invention. Claims 18-29 are canceled without acquiescence to any rejection. New claims 38-41 are added to recite specific embodiments of the present invention. Support for these amendments may be found throughout the specification and claims as originally filed, for example, at paragraph 0133 of the published application US20030095971. Therefore, the amendments do not constitute new matter. The above amendments are not to be construed as acquiescence with regard to the Examiner's rejections and are made without prejudice to prosecution of any subject matter removed or modified by this amendment in a related divisional, continuation or continuation-in-part application. Following the present amendments, claims 2, 11, 31, and 38-41 are pending and under consideration.

Drawings

Figure 12B has been amended to present the correct Figure 12B as described in the specification as filed and as originally presented in prior Application No. 09/938,864, from which this application claims priority and which is incorporated by reference in its entirety. Accordingly, no new matter has been added. One sheet of drawings is presented herewith for approval.

Amendments to the Specification

The specification has been amended to update the status of all U.S. applications disclosed. Further, Applicants have amended the specification to capitalize trademark names and include the trademark symbol where appropriate. Applicants submit that every effort has been made to prevent the use of trademarks in any manner which might adversely affect their validity as trademarks.

Claim Objections

Claim 2 is objected to for an informality. The PTO requests that the “(a)” in claim 2 be removed because there is no “(b)” in the claim.

Applicants submit that claim 2 has been amended to remove the “(a)”, thereby obviating the objection.

Non-Statutory Obviousness-Type Double Patenting

Claims 2, 11, 31, 35 and 36 stand rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 7,144,581.

Without acquiescing to the ground of rejection, Applicants submit herewith an executed terminal disclaimer thereby obviating this ground for rejection.

Claim Rejections – 35 U.S.C. § 112, second paragraph (indefiniteness)

Claim 31 stands rejected under 35 U.S.C. § 112, first paragraph, as allegedly being indefinite. In particular, the PTO asserts that the claim contains the trademark/trade name MPL-SE.

Applicants note that “MPL-SE” is not a registered U.S. trademark, although “MPL” is. Accordingly, by way of the present amendment, Applicants amend claim 31 to recite “monophosphoryl lipid A” instead of MPL, thereby obviating the rejection. Reconsideration of the claims and withdrawal of the rejection are respectfully requested.

Claim Rejections – 35 U.S.C. § 102

Claims 2, 11, 18-29, 31, 35 and 36 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Gaiger, *et al.* (U.S. Patent 7,144,581). In particular, the PTO asserts that Gaiger, *et al.* disclose the peptide of SEQ ID NO:333 and further teach the claimed peptide in compositions as presently claimed and with adjuvants such as MPL-SE. The PTO

further asserts that Gaiger, *et al.* teach that the composition can contain the sugars recited in claim 18 at the recited concentrations.

Without acquiescing to the ground of rejection, and solely to advance prosecution, Applicants have canceled claims 18-29. Further to the election of SEQ ID NO:333 and the present amendment, the inventorship of the application has changed. The inventors of the presently claimed invention are Alexander Gaiger and Martin Cheever. As such, the issued 7,144,581 patent in the name of Alexander Gaiger and Martin Cheever, is no longer “by another” and may not be used as prior art under 35 U.S.C. § 102(e). Applicants are in the process of preparing a request to correct inventorship and have received the necessary executed documents from Drs. Cheever and Gaiger (enclosed for the Examiner’s convenience). A complete request to correct inventorship will be submitted in due course once the required executed documents are received from all parties. In the meantime, reconsideration of the claims and withdrawal of the rejection are respectfully requested.

In closing, Applicants respectfully submit that all of the pending claims are allowable and respectfully request favorable reconsideration of this application and its timely allowance. A good faith effort has been made to place the application in condition for allowance. However, in the event the Examiner has further questions or finds minor informalities that can be resolved by telephone conference, the Examiner is urged to contact Applicants' representative at (206) 622-4900.

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The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
SEED Intellectual Property Law Group PLLC

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Enclosures:

1 Sheet of Drawings (Figures 12A-12B)
Terminal Disclaimer
Declaration - Cheever
Statement of Facts – Cheever
Declaration - Gaiger

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